

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of an Inquiry into Possible Effects
of Financial Difficulties at NRG and Xcel on
NSP and its Customers and Potential
Mitigation Measures

ISSUE DATE: December 30, 2004

DOCKET NO. E, G-002/CI-02-1346

ORDER MODIFYING REPORTING
REQUIREMENTS AND ALLOWING
INTERVENTION

PROCEDURAL HISTORY

On October 22, 2002, the Commission issued its *ORDER REQUIRING ADDITIONAL INFORMATION AND AUDIT* in Docket No. E-002/M-00-1553 identifying the commitments made by Xcel in its Certification to the Securities and Exchange Commission (SEC), the NSP/New Centuries Merger Docket (E,G-002/PA-99-1031), and in this docket.

On January 6, 2003, the Commission issued an Order in this matter bifurcating the proceeding and putting the independent audit of Xcel's service quality reporting in a separate docket, Docket E,G-002/CI-02-2034.

On July 30, 2004, Xcel filed supplemental information and requested that the Commission either close this docket or modify the reporting requirements to adjust for the changed circumstances.

Comments were filed by the Minnesota Department of Commerce (the Department), Rebecca Winegarden, the North American Water Office (NAWO), Myer Shark, the Residential and Small Business Utilities Division of the Office of the Attorney General, and the Financial Services Policy Institute (FSP Institute).

On September 21, 2004, Mr. Shark filed additional reply comments and a petition to intervene.

The Commission met on November 23, 2004 to consider this matter.

FINDINGS AND CONCLUSIONS

I. Xcel's Request to Close Docket or Modify October 22, 2002 Order

In a supplemental filing submitted July 30, 2004, Xcel asked the Commission to consider closing the docket, subject to certain specified commitments and limited ongoing reporting. In the alternative, Xcel requested that the Commission 1) consider modifying the compliance requirements and 2) identify the procedure or schedule for any additional update reports to provide greater clarity regarding the ultimate resolution of this inquiry.

II. The Department's Comments

The Department stated that it had reviewed Xcel's July 30, 2004 supplemental filing and found that the Company has complied with the requirements of the Commission's October 22, 2002 Order. The Department noted that NRG was no longer associated with Xcel and reasoned that since NRG's financial circumstances can no longer affect Xcel, it was no longer important for Xcel to provide current detailed information regarding NRG.

The Department recommended that the Commission accept Xcel's report and close the docket, with the understanding that the Company's reporting requirements in Docket No. E, G-002/S-03-1760 would continue for the rest of 2004 and that Xcel would continue to inform the Commission at the appropriate time about any financial circumstances that could affect rates or service.

III. Comments of the RUD-OAG

The RUD-OAG stated that while Xcel's divestiture of NRG is a positive development for Minnesota ratepayers, important issues relating to NRG (when it was a subsidiary of Xcel) and to e prime (Xcel's non-utility natural gas marketing and trading subsidiary) and their effects on Minnesota ratepayers remain. Specifically, the RUD-OAG noted that the Commodity Futures Trading Commission (CFTC) has charged that these Xcel subsidiaries gave inflated gas price reports to *Gas Daily*. RUD-OAG stated that since wholesale natural gas commodity costs are passed on to retail customers through the fuel clause, the false reports may have led to Minnesota ratepayers paying higher prices for natural gas than was appropriate. The RUD-OAG also stated that because natural gas is a fuel used in the production of electricity, the allegedly inflated trading prices provided to *Gas Daily* may have resulted in inflated electric rates as well.

In addition, the RUD-OAG stated that the possible effect of NRG's financial difficulties on Xcel's expenditures to maintain its infrastructure (possible diversion of Xcel's resources to deal with NRG's financial difficulties to the detriment of NSP's service quality) has not yet been squarely addressed.

As a consequence, the RUD-OAG urged that the Commission not close the docket until these possible ratepayer impacts have been resolved.

IV. Other Comments

A. Myer Shark

Mr. Shark stated that it was necessary to keep the docket open and reactivated in order to address and act on matters that the Commission designated in its October 22, 2002 Order as vital to assure the continued reliable service at reasonable cost for the consumers who support the utility.

B. Rebecca Winegarden

Ms. Winegarden recommended that the Commission consider and clarify two concerns before agreeing to close this docket: 1) the potential financial impact of pending legal matters directly or indirectly related to NRG and Xcel Energy; and 2) whether the underperformance that led to Xcel's \$100,000 service quality penalty was attributable to the merger or to NRG financial difficulties.

C. North American Water Office (NAWO)

NAWO stated that it would not be prudent or reasonable for the Commission to close the docket and end its investigation just after NRG/Xcel Energy has been charged with violations of the Commodities Exchange Act. NAWO urged the Commission to keep the docket open and continue its investigation with relevant parties such as the CFTC and regulators in potentially impacted states to determine whether NRG/Xcel Energy engaged in illegal activities and, if so, what impact those activities had on consumers and what mitigation measures would be appropriate.

D. The Financial Services Policy Institute

The FSP Institute recommended that the docket be kept open with a renewed focus on the financial structures and trading operation constructed by Xcel, its investment banks, and its accounting firm. The FSP Institute indicated that this focus is warranted because it was possible that other energy companies used the same tactics that Enron did but because they were not scrutinized as much as Enron may not have been found culpable.

FSP Institute clarified that it was not charging that Xcel or NRG was guilty of any crime and simply questioned whether Xcel had an Enron-like arrangement with its major creditors regarding losses with NRG. The FSP Institute also questioned whether NRG/Xcel made deals with Wall Street investment banks similar to the ones Enron made, and if so, whether these deals affected ratepayers in the end. To answer those questions, the FSP Institute recommended that the Commission hire a forensic accountant to dissect all deals that both NRG and Xcel made with their creditors since NRG's creation.

The FSP Institute made several other structural or legislative recommendations that went beyond the scope of this proceeding and/or the Commission's jurisdiction.

V. Commission Analysis and Action to Maintain This Docket

The Commission agrees with the commenting parties that all the financial concerns raised in this proceeding have not been addressed. There are also numerous questions regarding the financial implications on service quality that have not yet been resolved.¹ For these reasons, it would be premature to close this docket.

¹ Nor have these service quality issues been addressed in the service quality docket (Docket No. E,G-002/CI-02-2-34), which has been narrowly focused on documentation of outage data.

While many of the issues in this docket cannot be fully addressed until the Company's next electric rate case, keeping the docket open at least until the next electric rate case is completed would be prudent. Federal proceedings and investigations are ongoing and may shed additional light on the relationships and activities of energy traders and their affiliates. Keeping this docket open provides a vehicle for monitoring potential, or previous, financial and service quality impacts from previous NSP affiliations.

It is true that if this docket were closed, the Commission could open another if additional information is discovered. However, there is little substance to be gained from such a move and keeping this docket open will ensure consistency of the record with regard to these issues.

At the same time, some of the reporting requirements established in the Commission's October 22, 2002 Order could be modified:

- First, due to positive changes in Xcel's financial position, monthly reports on NSP's actual year-to-date capital structure are no longer necessary, as previously required by Ordering paragraph 2,a. of the October 22, 2002 Order.
- Second, it is not necessary for the Company to provide copies of routine filings with federal agencies, such as 10-K reports and 8-K reports. The Commission will therefore discontinue that requirement which appears at Ordering Paragraph 3,d of the October 22, 2002 Order. Some prudent level of monitoring is still appropriate, however. Therefore the Commission will require the Company to continue reporting any significant event and require it to notify the Commission of any non-routine filings with the SEC or other federal agencies. In addition, to keep the parties to this action abreast of developments, the Commission will also require Xcel to provide copies of any non-routine SEC filings by e-mail to Commission Staff, the Department, the RUD-OAG, and Myer Shark.
- Third, the requirement that the Company file Quarterly reports of all utility debt issuances made in the most recent quarter, the interest yield of those issuances, and the bond ratings of each utility issuing the bonds (Ordering paragraph 5 of the October 22, 2002 Order) can be eliminated. Though no longer required to file this information as a matter of course, NSP should continue to maintain this information so that it will be available if requested or within the context of a rate proceeding.

The Commission clarifies that although these reporting requirements have been modified, Xcel will still be held to the assurances that it made regarding ratepayer impacts and the modifications do not alter any requirements contained in other Commission Orders.

VI. Myer Shark's Petition to Intervene

Minn. Rules, Part 7829.1400 requires petitions to intervene to be filed before the initial or reply comment period expires. In this docket, therefore, that deadline passed in October 2002. However, Minn. Rules, Part 7829.3100 also provides that the Commission may vary the time periods established in Chapter 7829 on its own motion for good cause shown.

In this case, no party has objected to Mr. Shark's request and Mr. Shark's contributions to the discussion have been welcomed. Moreover, on a going forward basis, no additional burden appears imposed on the process or any party by granting his request. In the unique circumstances of this case, the Commission finds good cause to waive the timeliness consideration and will exercise its discretion to permit the intervention of Myer Shark.

ORDER

1. Myer Shark is granted intervener status in this matter.
2. Filing requirements of the October 22, 2002 Order are hereby modified as follows:
 - a. The requirement of Ordering Paragraph 2,a that Xcel file monthly reports on NSP's actual year-to-date capital structure is eliminated.
 - b. The requirements of Ordering Paragraph 3,d are modified to require only that Xcel
 - (1) report any significant event for NSP-MN or Xcel to the Commission and
 - (2) provide by e-mail to the Commission, the Department, the RUD-OAG, and Myer Shark copies of the reports it makes to the SEC.
 - c. Xcel's obligation under Ordering Paragraph 5 to provide quarterly reports of all utility debt issuances, the interest yield of those issuances, and the bond ratings of each utility issuing the bonds is eliminated. Instead, Xcel shall simply continue to maintain a record of this information.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), or 1-800-627-3529 (MN relay service).

This document was created with Win2PDF available at <http://www.daneprairie.com>.
The unregistered version of Win2PDF is for evaluation or non-commercial use only.